

**MINUTES**  
**IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND**  
**PROGRAM**

**September 25, 2008**

**COMMISSIONER'S CONFERENCE ROOM**  
**IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET**  
**DES MOINES, IOWA**

Angela Burke-Boston, sitting in for Chairperson Susan Voss, called the Iowa UST Board meeting to order at 10:00 A.M. A quorum was present. Roll call was taken with the following Board members present:

Nancy Lincoln  
Doug Beech  
Jim Holcomb  
Stephen Larson (via telephone for Michael Fitzgerald)  
Tim Hall (via telephone for Richard Leopold)  
Jeff Robinson

Also present were:

David Steward, Attorney General's Office  
Scott Scheidel, Program Administrator  
James Gastineau, Program Administrator's Office  
Lacey Skalicky, Program Administrator's Office  
Brian Tormey, Iowa Department of Natural Resources  
Elaine Douskey, Iowa Department of Natural Resources

**APPROVAL OF PRIOR BOARD MINUTES**

The minutes from the August 27, 2008 Board meeting were reviewed. Mr. Holcomb pointed out that he had attended that meeting in person. Ms. Douskey noted that the last paragraph on page 6 should be amended to read "water supply interest groups" rather than "water supply department". Mr. Holcomb moved to approve the minutes with amendments, and Mr. Beech seconded the motion, and by a vote of 5-0, the minutes were approved.

**CLOSED SESSION**

Ms. Burke-Boston noted there were no matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21. No closed session convened.

## **PUBLIC COMMENT**

Jeff Hove from the Petroleum Marketers and Convenience Stores of Iowa (PMCI) expressed his appreciation that the Board continued to pursue the agreements with the Department of Natural Resources (DNR) to define no further action (NFA) claims and to compromise on a study to establish risk to pumping water wells as receptors of leaking underground storage tank (LUST) site contamination. He noted that the Petroleum Marketers were in favor of the funding agreement format that established milestones for DNR to meet over the fiscal year in exchange for funding.

## **BOARD ISSUES**

### **A. 28E Agreement re: Ch. 135 Amendments**

Mr. Scheidel presented the Board with a 28E agreement between the Board and the DNR for the study of the influence of pumping water wells on petroleum contamination plumes. Mr. Scheidel explained that the purpose of the 28E agreement and study was to determine which risks to water wells were real and which would not be realized before subjecting the regulated public to the increased cost of addressing the possibility. He stated that the Environmental Protection Commission (EPC) would have to agree with the plan outlined in the 28E agreement, and then DNR would have to remove or alter the current rule pending before the Administrative Rules Review Committee (ARRC). The EPC and the ARRC were scheduled to meet on October 14, 2008; and all parties had agreed to a session delay to allow time to rescind the current rule and re-file it.

Mr. Scheidel reviewed how the study would affect UST Fund claimants. Going forward the DNR would regulate sites using the new Tier II model, while concurrently the DNR and the Fund would conduct the study on certain sites to make sure the new model did not miss the theoretical risks to receptors located outside the modeled plume for which DNR had raised as a concern. He explained the plan allowed the regulated public to benefit from the use of the new model, while exercising due diligence with regard to the environment. And if an unreasonable risk were to be found, the Fund claim would cover the costs to address that risk. Additionally, if the site previously had acquired a no further action (NFA) certificate, then the NFA agreement with DNR would address that risk. He noted that one reason for the study was to avoid putting a burden on the regulated public for unproven theoretical risks and another reason was to reduce costs to the Board until potential risk identified as being real. He explained that the estimated cost of the study of these sites ranged from \$500,000 to \$1,500,000, and he stated the agreement allowed the study to continue for up to 5 years, during which at least 125 LUST sites were to be studied.

Brian Tormey of the DNR explained that he had not put the rule on the EPC agenda for the October meeting, but they would update the EPC during the general discussion period. He explained that rescinding a rule required a Notice of Intended Action, and then DNR would have to re-write the rule and re-file it, for which they were not prepared; however preparations would be set for the November meeting. He stated the session delay would be the only way to allow for the current rule to be rescinded and re-filed.

Mr. Beech moved to approve the 28E agreement presented in the Board packets on the condition that the session delay before the ARRC occurs and all parties agree to the rule. Ms. Lincoln seconded his motion, and it was approved by a vote of 5-0.

**B. NFA 28E Agreement**

Mr. Scheidel next presented the Board with a 28E agreement between the Board and the DNR to establish the eligibility and procedures for claims which previously had received NFA certificates but were now determined still to be likely sources of unreasonable risk. The change in statute, which was effective April 20, 2007, removed the responsible party from the coordination of the process so that new owners and operators could rely on the NFA certificate and any need to address the risk would be accomplished through an agreement between the Fund and the DNR. Mr. Scheidel explained that the DNR would determine that an unreasonable risk may exist at a site despite the NFA certificate, and the site would be eligible to enter the NFA process with six specific exceptions.

The exceptions included LUST sites that were closed due to lack of funding, if the certificate were issued with disregard for factual, technical, procedural or other material errors or omissions, if the risk at the site were due solely to a change in regulations by the EPC, if the risk at the site were due solely to an impact of a chemical that was not identified as a “chemical of concern” at the time the certificate was issued, if the Board were to determine the risk at the site were solely due to non-compliance with the terms of an institutional control for which the DNR relied to approve a no action required (NAR) classification, or if the risk at the site were caused exclusively by a release occurring after the release for which the NFA certificate was issued.

Mr. Scheidel also stated that the Board would have exception authority to allow for eligibility to any site the Board agrees may qualify even in the presence of one of the exception conditions. He explained the Board would work with the DNR to retain one or more groundwater professional firms to quickly address these sites as needed.

Mr. Holcomb submitted a motion to approve the language in the NFA 28E agreement, and Mr. Beech seconded that motion, which was approved by a vote of 5-0.

**C. DNR Funding Discussion (FY09)**

Mr. Scheidel presented a draft 28E agreement between the Board and the DNR with regard to the Board providing funds to the DNR to assist with its fiscal year 2009 operating costs of the UST Section. Milestones were set within the agreement, with the final set defined by the Administrator’s Office based on Iowa UST Fund Board goals that DNR indicated they could work on this fiscal year.

Those included the implementation of a “low risk” site closure policy or rule jointly agreed upon by DNR and the Board; completion of a review of actual experiential data and studies and draft jointly agreed revisions to RBCA rules for plastic water lines; preparation of a written plan for the evaluation of other RBCA rules including soil gas methodology and guidance, sewers as receptors, surface water restrictions, and capturing effect of time on historical releases; and a

meeting between DNR central office and field office representatives to review UST/LUST priorities since the April 1, 2009 to set priorities for the first quarter of fiscal year 2010, with preparation of a report detailing such.

*Mr. Robinson joined the meeting at 10:40 A.M.*

Mr. Scheidel noted that the DNR had also expressed a desire to seek the appropriation of tank tag fees (UST Fund's 77%) directly by request to the Legislature, so that future DNR funding would not have to be supplemented through 28E agreements with the Board. Mr. Scheidel reminded the Board that the idea had been discussed at previous meetings, although he had received comments of concern from interested parties with regard to the DNR receiving those funds directly. He noted the legislative intent, as clarified by Mr. Robinson in e-mail to all, was that the tank tag fee increase was to be directed to the Iowa UST Fund. Other interested parties had commented to him that they preferred the cooperative agreements between the Board and the DNR, which provided a measurement of progress through the achievement of goals.

Mr. Tormey noted that when the DNR had expressed interest in pursuing tank tag fees in May. His understanding was that a 28E for fiscal year 2009 funding would be a contingency if that effort failed. Then, he explained, that the notion of a joint-effort to present a legislative package to include the appropriation of the tank tag fees directly to the DNR was discussed at the Annual Strategic Planning meeting in July. Furthermore, he explained that legislative proposals were to be submitted to the Governor's Office by September 15<sup>th</sup> in order to be considered during legislative session, and the DNR had submitted a proposal with regard to tank tag fees already.

Mr. Beech expressed his concerns that DNR cooperation might end if DNR receives funding directly through the referenced proposal. Mr. Tormey countered that the DNR shortfall would still exceed any amount of funding from tank tag fees, and therefore opportunity would exist for a 28E agreement to fill the gap. Also, concerns were stated that the success of the DNR's proposal could lead to an increase in the fees to register tanks, causing additional burden to the regulated community. Although tank tag fees had not been increased for many years, the proposals that had circulated in recent years had included 300-400% increases. Mr. Hove of PMCI had a similar recollection that proposed increases were significant from his discussions with DNR in reference to the inspection program.

With regard to condition of payment within the agreement, Mr. Scheidel and Mr. Steward offered to add a postponement of payment condition until a contingency was met, unless otherwise agreed to. Mr. Scheidel stated they would continue to work on the draft agreement to present to the Board at a later meeting following the meeting with the EPC and ARRC.

#### **D. LPT Proposal**

Mr. Scheidel noted that he had expected a proposal from the Petroleum Marketers Management Insurance Company (PMMIC) for a limited number of UST Fund claimant sites; however he had not received a proposal by the time the meeting convened. He expected a proposal in time for the October Board meeting.

*Mr. Larson exited the conference call at 10:50 A.M.*

**E. DNR Update**

Ms. Douskey of the DNR reported that the DNR had exceeded its federal fiscal year (FFY08) end goal for the U.S. Environmental Protection Agency with 166 LUST sites closed.

**PROGRAM BILLINGS**

Mr. Scheidel presented the current monthly billings to the Board for approval.

1. Aon Risk Services.....\$122,726.00  
Consulting Services – October 2008 (\$57,513.00)  
Claims Processing Services – October 2008 (\$55,213.00)
2. Attorney General’s Office.....\$14,608.39  
Services provided for July & August 2008

No additional billings for outside cost recovery counsel were presented by the Attorney General’s office for this meeting. On a motion by Mr. Holcomb and a second by Ms. Lincoln, all billings were approved by a vote of 4-0.

**MONTHLY ACTIVITY REPORT**

Mr. Scheidel noted that the August activity report and financials were provided for the Board members to review.

**ATTORNEY GENERAL’S REPORT**

Mr. Steward stated there was nothing to report from the Attorney General’s Office.

**CLAIM AUTHORITY**

Mr. Gastineau presented the following claim authority requests:

**1. Site Registration 8606248 – Country Stores of Carroll, Wall Lake**

This site was classified no action required (NAR) with free product. The site was previously worked on under a community remediation project (CRP) because the plumes were co-mingled. The CRP was closed in 2003, with this site achieving NAR with free product. No free product recovery had been completed since the closure of the CRP, and GAB Robins recently restarted the process by contacting all parties. Previous authority to \$75,000 had been granted, and \$104,576.83 was incurred to date. Additional authority to \$140,000 was requested for free product recovery (FPR) by hand bailing and monitoring well abandonment.

A motion to approve the claim authority was submitted by Mr. Holcomb and seconded by Mr. Beech. Approved 4-0.

## **2. Site Registration 8600372 - Tyson Foods, LeMars**

This site was classified NAR with diesel free product. There was a deep water table and free product was persistent with as much as 4.5 feet in the source well in 2008 at the site. The cost had been minimal with the responsible party doing hand bailing. A DNR inspection resulted in the requirement that free product reporting be performed on a monthly basis instead of quarterly. Previous authority to \$75,000 had been granted, and \$76,630 was incurred to date. Additional authority to \$125,000 was requested for the FPR and monitoring well abandonment.

Mr. Holcomb submitted a motion to approve the claim authority, and Ms. Lincoln seconded the motion. Approved 4-0.

## **3. CRPCA 0308-31 Chelsea Community Remediation Project**

Mr. Gastineau reported that the project was contracted in 2003 to address one site in Chelsea that was classified high risk due to plastic water lines, vapor receptors, and a protected groundwater source. Activities at the site had included plastic water line replacement and an excavation to remove the main area of the contaminant plumes. Soil sampling in 2007 indicated that much soil contamination remained. The original contract was written as a two-year agreement with 4 optional one-year extensions. Mr. Gastineau requested the Board authorize the 4<sup>th</sup> extension of the contract to allow continued activity on the project. The current contract authority for the project was \$105,759.35, and \$95,831.07 had been paid to date. No additional funding was requested for the contract.

Mr. Gastineau noted that the current owner of the property was the City of Chelsea, which had acquired the site from Tama County following a default on property taxes. The County had not applied for Iowa UST Fund benefits to date, although if done so and with an agreement, the City could obtain 100% benefits for all future work.

After some discussion, Ms. Lincoln submitted a motion to not authorize a 4<sup>th</sup> extension of the agreement due to little progress and little interest from the site owner. Mr. Beech seconded that motion, and it was approved by a vote of 4-0.

## **4. CRPCA 0309-33 Bentley (Neola) Community Remediation Project**

Mr. Gastineau reported that the project was contracted in 2003 to complete testing and to evaluate the corrective action options at a site near Neola, Iowa. Due to the proximity to multiple private water wells and the lack of a public water supply system, corrective action was necessary at the site. An in-well air stripping system was installed early in 2007, and it was expected that it should operate for several more years to be effective. The project was contracted through a two-year agreement with the option of 4 one-year extensions. Mr. Gastineau requested the Board authorize the 4<sup>th</sup> extension for the contract to allow for continued activity on the

project. The current contract authority for the project was \$400,000 and no additional funding was requested for the contract.

Tom Draur of Barker Lemar noted that the experimental system in use had a slow start but was beginning to yield good results.

Mr. Beech submitted a motion to authorize the 4<sup>th</sup> extension of the agreement for the Bentley (Neola) CRP. Ms. Lincoln seconded that motion, and it was approved by a vote of 4-0.

## **5. CRPCA 0309-34 Conesville Community Remediation Project**

Mr. Gastineau reported that the project was contracted in 2003 to complete testing and to evaluate corrective action options at a site in Conesville, Iowa. Due to low contaminant levels, the DNR approved the installation of carbon filters on the on-site water well combined with monitoring in lieu of invasive corrective actions. The filter was first installed in 2004 and had been replaced annually. In 2007, the recommendation to reclassify the site was rejected by the DNR and one more year of monitoring was required. It was hoped that a no action required (NAR) classification would be obtained in 2008. The original contract was written as a two-year agreement with 4 optional one-year extensions. Mr. Gastineau requested the Board authorize the 4<sup>th</sup> extension of the contract to allow continued activity on the project. The current contract authority for the project was \$43,272.20 and \$10,288.30 had been paid to date. No additional funding was requested for the contract.

Mr. Beech submitted a motion to authorize the 4<sup>th</sup> extension of the agreement, and Mr. Holcomb seconded that motion, which was approved by a vote of 4-0.

## **CONTRACTS ENTERED INTO SINCE THE AUGUST 27, 2008 BOARD MEETING**

Mr. Scheidel noted that the Board had not entered into any agreements or contracts since the August 27, 2008 Board meeting.

## **OTHER ISSUES**

Mr. Scheidel reported the next Board meeting was scheduled for Thursday, October 23, 2008. Mr. Holcomb noted that he would be out of town that day. All other Board members reported no conflicts.

## **CORRESPONDENCE AND ATTACHMENTS**

Ms. Burke-Boston asked if there was any further business, and there being none, Ms. Lincoln moved to adjourn, and Mr. Holcomb seconded the motion. By a vote of 4-0, the Board adjourned at 11:14 A.M.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott M. Scheidel". The signature is written in a cursive, flowing style with a prominent initial "S".

Scott M. Scheidel  
Administrator